

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID MAGEE,)
)
Plaintiff,) 4:05cv3224
)
vs.) MEMORANDUM AND ORDER
)
NEBRASKA PAROLE)
ADMINISTRATION, et al.,)
)
Defendants.)

This matter is before the court on filing no. 13, the Response to Order to Show Cause filed by the plaintiff, David Magee, a prisoner in the custody of the Nebraska Department of Correctional Services (“DCS”). In filing no. 12, the court directed the plaintiff to show cause why he had not served the defendants with process within the time required by Fed. R. Civ. P. 4(m). The plaintiff has shown cause, in that he has been hospitalized with broken legs for a protracted period, and his legal papers were lost by corrections staff while he was in the hospital.

IT IS THEREFORE ORDERED:

1. That the Clerk of Court shall send the plaintiff one summons form¹, one Form 285, a copy of the court's Order on Initial Review (filing no. 7), a current docket sheet, and a copy of this Memorandum and Order;
2. That the plaintiff shall complete the summons and Form 285 and return the completed forms to the court by April 14, 2006;
3. That when completing the forms, the plaintiff must comply with Neb. Rev. Stat. § 25-510.02(1), which states in pertinent part:

(1) The State of Nebraska, any state agency ... and any employee of

¹Only one of each form for service of process is necessary because, as explained in the Order on Initial Review, all of the defendants in their official capacity are the equivalent, in law, of the State of Nebraska. Therefore, the plaintiff may list all of the defendants on one summons form and on one Form 285. If the plaintiff amends his complaint to specify that the persons named as defendants are sued in their individual capacity also, he shall request additional summons and 285 forms, as persons are served in different locations in their official and individual capacities.

the state ... sued in an official capacity may be served by leaving the summons at the office of the Attorney General ... or by certified mail service addressed to the office of the Attorney General

The address of the Nebraska Attorney General's office is 2115 State Capitol, Lincoln, Nebraska 68509;

3. That when the plaintiff returns the completed forms, the Clerk of Court shall sign the summons and forward it with a copy of the complaint to the U.S. Marshal for service of process; the Marshal shall serve the summons and complaint without payment of costs or fees; and service may be by certified mail pursuant to Fed. R. Civ. P. 4 and Nebraska law in the discretion of the Marshal; and

4. That if the plaintiff does not return the completed forms by April 14, 2006, the Clerk of Court shall bring this case to the attention of the court.

DATED this 27th day of March, 2006.

BY THE COURT:

s/ F. A. GOSSETT
United States Magistrate Judge